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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,073	03/16/2004	Leemon C. Baird III	TRO-0301C	3771

25007 7590 03/15/2007  
LAW OFFICE OF DALE B. HALLING, LLC  
655 SOUTHPOINTE CT, SUITE 100  
COLORADO SPRINGS, CO 80906

EXAMINER
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TRAORE, FATOUMATA

ART UNIT	PAPER NUMBER
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2109

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/15/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/802,073

Applicant(s)

BAIRD ET AL.

Examiner

Fatoumata Traore

Art Unit

2109

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03/16/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This action is in response of the preliminary amendment filing of March 1, 2004, which cancelled claims 2-49. Thus, claim 1 is pending and has been considered below.

#### ***Double Patenting***

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claim 1 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6732278. This is a double patenting rejection.

#### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 1 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Regarding claim 1, it appears that "first module" and "second module" in claim 1 are directed to software per se. Claim 1 neither includes any computer hardware component(s) nor positively recites that the cited

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modules are stored on a computer medium that can be read by a machine. As such, claim 1 is directed to software per se which is non-functional descriptive material and non-statutory since the claim does not require any physical transformation and the invention as claimed does not produce a useful, concrete, and tangible result to form the basis of statutory subject matter under 35 U.S.C 101.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Angelo (US 5949882).

Claim 1: **Angelo** discloses an apparatus for allowing access to secured computer resource comprising:

- a. A first module for authenticating a user to said device (the computer user is required to provide an external token (first module) or smart card that is coupled to the computer through specialized hardware) (column 3, lines 31-39);
- b. A second module responsive to said first module for providing the user with access to the network resource using a network resource

password unknown to the user (once entered (second module), a user password is encrypted using the encryption algorithm contained in the external token to create a peripheral password (unknown to the user) (column 3, lines 40-48).

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
  - a. Ketcham (US 6075860) Apparatus and method for authentication and encryption of a remote terminal over a wireless link.
  - b. Scheidt et al (US 543851) Personal Computer Access control system.
  - c. Moussa et al (US 6035406) plurality factor security system.
  - d. Baird et al (US 6732278) Apparatus and method for authenticating access to a network resource.
  - e. Kigo et al (US 6073234) Device for authenticating user's access rights to resources and method.
  - f. Gullman et al (US 5280527) Biometric token for authorizing access to a host system.
  - g. Labaton et al (US 5524072) Methods and apparatus for data encryption and transmission.
  - h. Watkinset al (US 579560) Method of automatic verification of personal identity.

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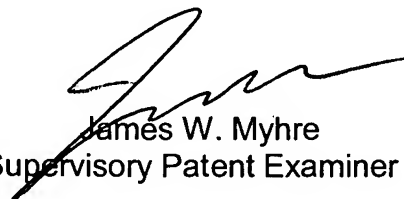
- i. Pare et al (US 5764789) Tokenless biometric ATM access system.
- j. Hsu et al (US 6038666) Remote identity verification technique using a personal identification device.
- k. Nevarez et al (US 6189103) Authority delegation with secure operating system queues.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fatoumata Traore whose telephone number is (571) 270-1685. The examiner can normally be reached Monday through Thursday from 7:30 a.m. to 4:30 p.m. and every other Friday from 7:30 a.m. to 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim W. Myhre, can be reached on (571) 272 6722. The fax phone number for Formal or Official faxes to Technology Center 2100 is (571) 273-3800. Draft or Informal faxes, which will not be entered in the application, may be submitted directly to the examiner at (571) 274-1685.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (571) 272-2100.

FT  
March 6, 2007

  
James W. Myhre  
Supervisory Patent Examiner